**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 669 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE C.K.BUCH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**VINODBHAI KANJIBHAI CHAUHAN (MOCHI) - Appellant(s)**
**Versus**
**STATE OF GUJARAT & 1 - Opponent(s)**

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**Appearance :**

MR.DIVETIA, LD. ADVOCATE FOR MR. RAJESH M AGRAWAL for Appellant (s) : 1,MR YOGESH R AGRAWAL for Appellant(s) : 1,
PUBLIC PROSECUTOR for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE C.K.BUCH**

**Date : 12/09/2007**

**ORAL JUDGMENT**

The present appellant-who is the original accused No.1 has challenged the legality and validity of the order of conviction and sentence passed by the

learned Principal Sessions Judge, Surendranagar in Sessions Case No.87 of 2004 on 29th December, 2005 whereby the present appellant has been convicted for the offence punishable under Sections 489 (A), (B), (C), (D) and (E) of the Indian Penal Code and has been sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.5,000/- in default thereof to undergo six months simple imprisonment for each offence punishable under Section 489 (A), (B) and (C). Whereas for the offence punishable under Section 489 (D) he has been sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.3,000/- in default thereof to undergo three months simple imprisonment and for the offence punishable under Sections 489 (E) has been sentenced to pay a fine of Rs.100/- and in default thereof to undergo three days simple imprisonment. All the sentences are ordered to be run concurrently and appellant has been given the benefit of Section 428 of the Code of Criminal Procedure.

2. Mr.Divetia, learned Advocate appearing for

Mr.Agrawal has taken this Court through the judgment and order under challenge, as well as, oral and documentary evidence led during the course of trial. The judgment and order has been assailed on various grounds which are mentioned in paragraph No.4 of the memo of appeal. However, Mr.Divetia, has concentrated his argument mainly on following points.

1) There is no legal and convincing evidence as to the recovery of muddamal allegedly found from the shop having sign board of Sukun Computer, that is, Shop No.207 allegedly occupied by the appellant.
2) As per rule of best evidence the prosecution should have led cogent evidence that the shop No.207 having sign board of Sukun Computer was either owned or occupied by the appellant and for that no legal convincing evidence has been led.
3) The Panchas have not supported the case of prosecution and no other witnesses have been examined which are corroborative in nature. So there is no evidence which can be said to

be independent in nature on record.

4) It was not either legal or proper for the Court to believe the Police Witnesses as if they are telling gospel truth before the Court.

5) The police witnesses does not get corroboration even from the witnesses who are occupying neighbouring shop to the shop No.207.

6) There is no evidence that accused was found in possession of fake currency notes or at least the evidence which can be inferred that he had admitted to put so-called fake currency notes into circulation.

7) The accused is basically selling footwear and he has been made scape goat on hearsay evidence that was received in the nature of secret information by Police.

2.1 Mr.Divetia has further submitted that the finding recorded by the learned trial Judge is mainly based on conjectures and surmises and while developing this argument Mr.Divetia has drawn

attention of this Court to the evidence of a person who had developed the hobby of collecting old currency notes etc., and his evidence has been given undue weightage otherwise the evidence of such a nature was irrelevant in linking the accused with the crime. According to Mr.Divetia the evidence of expert helps the accused because the expert had stated that envelope received by him were not bearing slips signed by the Panchas and he was not sure that any one of the envelope from where the eighty currency notes were found also containing the slip signed by the Panchas. For short the recovery procedure has not been satisfactorily proved by the prosecution and therefore the accused could not have been linked with the muddamal allegedly seized.

3. There is strong resistance placed by Ms.Pandit, learned A.P.P. According to her, the finding recorded by the learned trial Judge is based on sound reasons and the learned trial Judge has rightly accepted the evidence of the Police Witnesses. As per settled legal position while believing the evidence of the Police Witnesses, the

Court should conscious and scan the evidence closely. The Court should also try to seek some corroboration either from the circumstances or from other evidence before accepting the version given by the Police Witnesses. In the present case, there are number of circumstances which directly corroborates the say of Police Witnesses.

4. It is the evidence that shop No.207 was raided on receipt of the information by the Police. The sign board of the shop shows the name of Sukun Computer and it does not reflect that the shop is selling footwear. The recovery Panchnama shows that the shop was closed when the Police had raided and it was opened by the Police at that time the appellant-accused was found inside the shop. It is also referred in the Panchnama that the driving licence of the accused was recovered alongwith other documents, etc. So there was ample evidence before the trial Court to hold that the present appellant that is original accused No.1 was in occupancy of the shop. The status and other geography of the shop is reflected in one of the document tendered in

evidence, that is Exh.36 and the neighbouring shop keeper though has not supported the case of prosecution but the evidence at least shows that shop No.207 was raided at a given date and time. So the raid carried out by the Police in shop No.207 is not an hoax or created. It was not possible for the Police to plant computer in Shop No.207 especially when one witness examined by the prosecution has proved that he had sold the computer to the accused but the same was installed at the residence of the accused. Meaning thereby the Court could have reasonably inferred that the computer must have been shifted to the shop at any point of time prior to the date of raid. Number of incriminating articles which can be used in getting colour printing were recovered and one shop keeper has supported the case of prosecution that the accused had purchased the cartridge which was being used for printing the paper. The opinion of the expert satisfactorily proves that the muddamal currency notes were fake currency notes and process of preparing or manufacturing the fake currency notes was possible from the material that was found from shop No.207,

that is, Sukun Computer. So looking to the gravity of offence and in view of the submissions made before this Court, the Court may dismiss the appeal.

5. The learned trial Judge has accepted the evidence of Prosecution Witness No.16, Mr.D.R.Chudasama, Police Inspector, who has been examined at Exh.29 so far as the contention of the complaint (Exh.30), as well as, Panchnama of search and seizure (Exh.31) carried out by him in presence of the Panchas viz.,Balvantsinh Ramansinh and Gulabsinh Manubha. The Panch-Balvantsinh has not supported the case of prosecution but certain facts stated by him clearly helps the prosecution. This witness has stated that he was called in complex situated at Tramway Road on the second floor and that too at a place where the work of computer was being performed. He has also proved the existence of article, including the xerox machine, papers, etc., and has also shown currency notes in the denomination of Rs.100/-. In the cross-examination he has also proved that the driving licence of the accused was also seized. This fact stated by the hostile

witnesses corroborates with the say of Police Officer, Mr.Chudasama. It is settled legal position that the evidence of the Police Officer can be accepted as reliable piece of evidence as there are no good reasons to disbelieve such version. Of course, the deposition of the Police Witnesses initially can be taken as shaky piece of evidence but if the Court is satisfied with the evidence of Police Witness which gets some corroboration either from oral evidence of the witnesses examined by the prosecution or documents produced by the prosecution or from the circumstance that may emerge while leading the evidence then the evidence of such Police Officer can be accepted and the learned trial Judge has discussed as to why he is inclined to accept the evidence of Mr.Chudasama.

6. As many as sixteen witnesses have been examined and it is relevant to note that over and above the evidence of Mr.Chudasama, Police Inspector, the Court has considered the evidence of expert, that is, Prosecution Witness No.15, Bhargav Kanaiyalal Dave. Prosecution Witness No.10-Chandrakant

Chhaganlal has proved that he has developed the hobby for collection of coins, postal stamps and currency notes, etc., and it was taken by accused before two to three years. This witness has stated that accused is doing the business of footwear and he is not aware that whether he is doing any other business. It is very likely that the accused may have similar interest in collection of stamps, coins or currency notes, etc., and innocently he may have taken a booklet from P.W.No.10-Chandrakant Chhaganlal. But it is not his defence that he was making experiment so that the booklet of rarely available currency notes can be published for the persons who are interested in such a hobby.

7. As discussed earlier, P.W.No.8-Gunvatray Harjivandas has proved that accused had purchased ink cartridges No.56 and 58 one piece of each. This witness has also proved the bills issued by him while selling ink cartridges that can be used for printing. The Court had ascertained that this witness is not committing mistake in naming the accused or identifying him as his customer; as he was having

spectacles of heavy number he was permitted to move in the Court room by the Court itself and he had identified the accused as his customer. When a customer of a trader facing serious charge, normally such trader would not implicate his own customer falsely that too at the instance of Police.

8. The number of currency notes found during the search also rules out the accidental presence of fake currency notes. In number of cases the Court has experienced that the fake currency notes can reach to anybody. A person carrying number of currency notes may not be even aware that certain currency notes carried or possessed by him are fake. When it is satisfactorily proved that the shop of the accused was raided and Panchas were present then there was no reason for the learned trial Judge to disbelieve the Panchnama which was drawn at Exh.31. The contents of the Panchnama has been proved by Police Inspector, Mr.Chudasama. Ultimately the shop was raided on secret information. It is very likely that the accused himself must have attempted to put the currency notes in circulation and the

investigating agency had collected the evidence to show that accused had attempted to put the currency notes in circulation. Of course, such witnesses have not supported the case of prosecution and the facts brought on record in the nature of contradiction cannot be read as substantive piece of evidence, but at least the investigating agency cannot be impeached that relevant good pieces of evidence were never collected or produced before the Court. It is proved by oral as well as documentary evidence that the accused had purchased the computer and it was installed at the resident of the accused and the evidence shows that the computer was seized from the shop having sign board of Sukun Computer. Even the neighbour who examined has not supported the case of prosecution, but has proved that shop No.207 was raided. When the Sukun Computer itself had printer and Panch has stated that there was one xerox machine also, there was no reason to get the work done outside from the shop, who is running the business of xerox copies. So, the method adopted by the accused appears to be strange. If a person was doing the business of footwear then why the various type of

rubber stamps, etc. or seals were found from his shop are the circumstances which are required to be explained by the accused in satisfactory manner.

9. The learned trial Judge has discussed all these aspect in detailed while elaborating the evidence to link the accused with the crime. It is not necessary to rewrite the whole judgment when the Court is satisfied with the reasons assigned by the learned trial Judge. The finding recorded by the learned trial Judge is based on sound and good reasons. There are logic and there is no element of material error or perversity.

10. One argument advanced by Mr.Divetia is that if the Court is of the view that the finding of the learned trial Judge is legal then at least the Court should reduce the quantum of punishment imposed because the accused is in jail since last more than three years and total period of punishment imposed by the learned trial Judge is of five years. But, it will be difficult for this Court to accept this submission considering the charge that has been found

proved against the accused. The offence is against the nation and the society and if any leniency is shown by reducing the substantive punishment then the order of reduction of punishment may take wrong message to the society.

11. So by adopting the reasons assigned by the learned trial Judge the Court is of the view the evidence led by the prosecution has been correctly evaluated in the background of the facts stated herein above.

12. In the result, the present appeal is hereby dismissed. The judgment and order of conviction and sentence passed by the learned Principal Sessions Judge, Surendranagar in Sessions Case No.87 of 2004 on 29th December, 2005 is hereby confirmed. Order and Direction accordingly.

***(C.K.BUCH, J.)***

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